Filed 9/9/03 In re Jairo A. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re JAIRO A., a Person Coming Under the Juvenile Court Law.	B161651 (Los Angeles County Super. Ct. No. VJ26161)
THE PEOPLE, Plaintiff and Respondent, v. JAIRO A., Defendant and Appellant.	

APPEAL from an order of the Los Angeles County Superior Court. Philip K. Mautino, Judge. Affirmed and remanded with directions.

Michele A. Douglass, under appointment by the Court of Appeal for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Linda C. Johnson and Marc E. Turchin, Deputy Attorneys General, for Plaintiff and Respondent.

After his motion to suppress evidence was denied, appellant Jairo A. admitted he possessed a concealable firearm.[1] (Welf. & Inst. Code, § 700.1; Pen. Code, § 12101, subd. (a)(1).) He was declared a ward of the court and ordered placed in the camp-community placement program. The maximum theoretical period of confinement was calculated as three years. On appeal from the order of wardship, he contends the court erred: (1) by denying his motion to suppress illegally seized evidence; and (2) by failing to consider whether the offense admitted was a felony or misdemeanor.

FACTUAL AND PROCEDURAL BACKGROUND

Suppression Hearing Proceedings

Viewed in accordance with the usual rules on appeal (*In re Brian A.* (1985) 173 Cal.App.3d 1168, 1173), the evidence established that at about 9:45 a.m. on April 20, 2002, Deputy Ron Kopperud was on routine patrol in Lynwood, accompanied by a civilian ride-along. Kopperud saw appellant and two other male Hispanic minors walking in the northbound lane and facing oncoming traffic. Two cars veered into the southbound lane to avoid striking them. Section 7-19.4 of the Lynwood Municipal Code prohibits pedestrians walking in the street and impeding oncoming traffic.

Kopperud decided to detain the minors either to warn or to cite them. He noticed two of the minors were wearing jackets and one was wearing a poncho. All three minors had their hands in their pockets, although the weather was not cold. Their hair was extremely short or shaved. Kopperud had them remove their hands from their pockets and step in front of his patrol car. He inquired if they had any weapons and none of them answered. Kopperud then asked where they were from. Appellant and another minor replied "Banning Street." Kopperud knew that Banning Avenue was two blocks north. He had frequently patrolled that street and had numerous contacts with "gangsters" who "live in the surrounding area and call themselves 'Banning Street.'" They "frequently tag

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[1] Appellant's birth date is May 23, 1984, making him 17 years old on the date of the offense.

or write on the walls throughout the neighborhood." In addition, Kopperud had been briefed that morning about a shooting that had occurred about two days earlier, two blocks from Banning Avenue. The shooter was described as a male Hispanic with a shaved head.

When the minors said they were from "Banning Street," Kopperud was "instantly reminded" of the gangsters. He also noticed the minor standing farthest away "appeared to be looking around" for "an avenue of escape." Kopperud also "was in fear that they were gangsters, [and that] they might be armed." He decided to pat them down for weapons. Kopperud grabbed appellant's hands and asked him to place them behind his head. Appellant complied. Kopperud grabbed the right side of appellant's unzipped jacket and pulled it back. As the deputy looked at appellant's pants pocket area, he "immediately saw the . . . handle of a black handgun sticking out from [appellant's right front] pocket." Kopperud recovered the weapon and cited appellant for violating section 7-19.4 of the Lynwood Municipal Code.

After counsel argued, the trial court denied the suppression motion. Appellant then admitted he had unlawfully possessed a firearm within the meaning of Penal Code section 12010, subdivision (a). At disposition, the court found: "This is a felony. Maximum time of custody is three years." Thereafter the court declared appellant a ward of the court and ordered him placed in a 90-day camp community placement program.

DISCUSSION

The patdown of appellant was proper.

Appellant claims the trial court erred by denying his suppression motion. He appears to concede Kopperud's initial detention of appellant to cite him for a municipal code violation was proper and challenges only the validity of the patdown search. Appellant maintains the patdown search was illegal because no objective facts supported a reasonable suspicion appellant was armed and dangerous. Instead, he argues, Kopperud's testimony shows the deputy conducted the patdown search based solely on the minors' hairstyle and ethnicity.

The propriety of a patdown search is assessed under *Terry v. Ohio* (1968) 392 U.S. 1, 27, which held that a police officer who lacks probable cause to arrest could undertake a patdown search where the officer has reason to believe the detainee is an armed and dangerous individual. (See also *People v. Dickey* (1994) 21 Cal.App.4th 952, 955-956.) The issue turns on whether a "reasonably prudent officer would be warranted in the belief, based on 'specific and articulable facts,' and not on a mere 'inchoate and unparticularized suspicion or "hunch,"' that he is dealing with an armed and dangerous individual' " (*Maryland v. Buie* (1990) 494 U.S. 325, 331-332, citations omitted.)

Whether a detainee's Fourth Amendment rights have been violated depends on "the 'totality of the circumstances' of each case to see whether the detaining officer has a 'particularized and objective basis' for suspecting legal wrongdoing. [Citation.] This process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that 'might well elude an untrained person.' [Citation.]" *United States v. Arvizu* (2002) 534 U.S. 266, 273.

We find the totality of the circumstances to have justified the patdown search in this case. What appellant fails to take into account is the logical progression of the deputy's suspicions. Kopperud detained appellant and his companions after observing them violating a municipal ordinance. By reason of the minors' appearance and responses while detained, and Kopperdud's knowledge of a recent shooting in the area, the deputy began to suspect the minors were gang members. When one of them seemed to be contemplating escape, Kopperud began to feel "uncomfortable." Except for the civilian ride-along, the deputy was alone. He had a reasonable and articulable suspicion that appellant and his companions might have a weapon under their clothing. This was a sufficient basis upon which to conduct a patdown search to ensure his own and his civilian ride-along's safety. (*Terry v. Ohio, supra*, 392, U.S. at p. 30.)

The court failed to comply with California Rules of Court, Rule 1487 (f)(9).

Appellant acknowledges the trial court complied with Welfare and Institutions Code section 702 by declaring the "wobbler" offense of Penal Code section 12101, subdivision (a)(1) admitted by appellant was a felony. Nevertheless he urges remand, arguing the court failed to indicate that it was aware of, and actually exercised, its discretion to declare the offense a felony rather than a misdemeanor. We agree.

As amended in 1998, rule 1487 of California Rules of Court obligates the juvenile court to make certain findings on an admission or plea of no contest. Specifically, subdivision (f)(9) of the rule states: "In a section 602 matter, the degree of the offense and whether it would be a misdemeanor or felony had the offense been committed by an adult. If any offense may be found to be either a felony or misdemeanor, the court shall consider which description shall apply and *shall expressly declare on the record that it has made such consideration* and shall state its determination as to whether the offense is a misdemeanor or a felony. These determinations may be deferred until the disposition hearing." (Emphasis added.)

The importance of this amendment is underscored by the fact it was part of an overall statutory change. Related rules were similarly amended, effective the same date.[2]

The 1998 amendment of rule 1487(f)(9), reflects the intent of the Judicial Council that more be required than a mere declaration that an offense is a felony or misdemeanor. The requirement of the rule that the trial court "shall expressly declare on the record that it has made such consideration" ensures that any such declaration is the product of actual

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[2] Rule 1488(e)(5) and former rule 1493(a) were amended, effective 1988, by the addition of substantially similar language. As modified, both rules provided the juvenile court "shall consider" whether a wobbler is a misdemeanor or a felony and "shall" state its determination on the record. Interestingly, effective July 1, 2002, rule 1493(a)(1) was again amended, this time substituting, inter alia, "*must*" for "*shall* expressly declare on the record it has made such consideration," bringing home the mandatory nature of the juvenile court's finding.

consideration of the issue by the trial court. We will remand the matter to the trial court to permit it to comply with its obligations under rule 1487(f)(9).

DISPOSITION

The cause is remanded for the limited purpose of permitting the trial court to comply with California Rule of Court, rule 1487(f)(9), by expressly declaring on the record that the trial court made a consideration of whether appellant's offense was to be described as a felony or a misdemeanor. In all other respects the order under review is affirmed.

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WOODS, J.

We concur:

JOHNSON, Acting P. J.

MUÑOZ (AURELIO), J.*

* Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.